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From: [REDACTED]

Sent: Tuesday, July 29, 2014 3:14:21 PM

To: [REDACTED]

Cc: [REDACTED]

Bcc:

Subject: Determining whether a portion of the American Opportunity Tax Credit is refundable

This email responds to your inquiry concerning the circumstances under which a portion of the American Opportunity Tax Credit (AOTC) is refundable. You asked whether the AOTC is not refundable to a taxpayer who (1)(a) is under age 18 at the end of his or her taxable year, or (b) is age 18 at the end of his or her taxable year and has earned income that is less than one-half of his or her support for that year, or (c) is over age 18 but not yet age 24 at the end of his or her taxable year, is a full-time student, and had earned income that is less than one-half of his or her support for that year; (2) had at least one living parent at the end of his or her taxable year, and (3) if married, does not file a joint return with his or her spouse for that taxable year. In particular, you asked whether these rules applied to a taxpayer claiming the credit only if the taxpayer was the student who incurred the expenses.

Section 25A(i) of the Internal Revenue Code, which is often referred to as the American Opportunity Tax Credit, provides that the Hope Scholarship Credit that is allowed under §25A(a)(1) may be increased and is partially refundable for certain taxpayers in taxable years beginning after 2008 and before 2018. The AOTC may be claimed with respect to qualified educational expenses described in § 25A(f)(1) and (i)(3) of the taxpayer or any individual whom the taxpayer properly claims as a dependent for a taxable year. Section 25A(f)(1)(iii). Section 25A(i)(5) allows 40 percent of the AOTC to be refundable to a taxpayer but not if “such taxpayer is a child to whom subsection (g) of section 1 applies for such taxable year.”

The rules described above relating to the age of the taxpayer and the amount of earned income, whether the taxpayer had a living parent, and whether the taxpayer files a joint return, represent the conditions for determining whether an individual is a child described in § 1(g) and, thus, whether the AOTC is non-refundable as provided in § 25A(i)(5). Importantly, those rules only apply to disallow a refund of the AOTC if the taxpayer claiming the credit is a child who meets those conditions. For that reason, if the taxpayer claiming the AOTC is a child described in § 1(g), the AOTC is non-refundable.

We hope you find this information helpful. Please let us know if you have any questions.